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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

## OAKLAND BULK & OVERSIZED TERMINAL, LLC.

Case No. 16-cv-7014-VC

**Plaintiff,**

## **SIERRA CLUB'S AND SAN FRANCISCO BAYKEEPER'S [PROPOSED] ANSWER**

## CITY OF OAKLAND

## Defendant

and

## SIERRA CLUB and SAN FRANCISCO BAYKEEPER,

## Proposed Defendant-Intervenors.

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*Attorney for Proposed Defendant-Intervenor  
Sierra Club*

Sierra Club and San Francisco Baykeeper (collectively, “Defendant-Intervenors”) hereby respond to the allegations in Plaintiff’s Complaint (ECF #6). The numbered paragraphs in this answer correspond to the numbered paragraphs of the Complaint.

## **NATURE OF THE ACTION**

1. The allegations in paragraph 1 are characterizations of Plaintiff's case which require no response. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

2. The allegations in paragraph 2 are characterizations of Plaintiff's case which require no response. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

3. Defendant-Intervenors admit there is a Development Agreement dated July 16, 2013. Defendant-Intervenors deny Plaintiff's characterizations of the Development Agreement since the Agreement speaks for itself and is the best evidence of its contents.

4. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and therefore deny them.

5. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and therefore deny them.

6. The allegations in paragraph 6 are too vague to permit a specific response. On that basis, Defendant-Intervenors deny the allegations in paragraph 6.

7. Defendant-Intervenors deny Plaintiff's characterizations of environmental groups' opposition to coal and petcoke. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations about coal handling and operations at the Terminal and therefore deny them. Defendant-Intervenors deny Plaintiff's characterizations of the City's health and safety hearing process.

8. Defendant-Intervenors admit that Oakland passed a coal and petcoke Ordinance and Resolution in 2016. Defendant-Intervenors deny Plaintiff's characterizations of the Ordinance and Resolution, as these documents speak for themselves and are the best evidence of their contents.

9. Defendant-Intervenors deny Plaintiff's characterizations of the Ordinance and Resolution in paragraph 9, as these documents speak for themselves and are the best evidence of their contents.

10. Defendant-Intervenors deny the allegations in paragraph 10.

11. Defendant-Intervenors deny the allegations in paragraph 11.

12. Defendant-Intervenors deny the allegations in paragraph 12.

13. The allegations in paragraph 13 are characterizations of Plaintiff's case which require no response. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

## PARTIES

14. Defendant-Intervenors admit paragraph 14.

15. Defendant-Intervenors admit paragraph 15.

## **JURISDICTION AND VENUE**

16. The allegations in paragraph 16 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

17. The allegations in paragraph 17 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

18. Defendant-Intervenors admit that the City of Oakland is within this District. The remaining allegations in paragraph 18 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

19. The allegations in paragraph 19 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

**INTRADISTRICT ASSIGNMENT**

20. The allegations in paragraph 20 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

**FACTUAL BACKGROUND**

21. Defendant-Intervenors admit that the area known as the Gateway Development Area was formerly the Oakland Army Base, and that ownership of the Oakland Army Base was transferred in 1999. Defendant-Intervenors deny that the land was transferred directly to the City of Oakland.

22. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 22 and therefore deny them.

23. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 23 and therefore deny them.

24. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 24 and therefore deny them.

25. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 25 and therefore deny them.

26. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26 and therefore deny them.

27. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding noticed public hearings and therefore deny them. Defendant-Intervenors admit the remaining allegations in paragraph 27.

28. Defendant-Intervenors admit the first sentence of paragraph 28. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations in paragraph 28 and therefore deny them.

29. The allegations in paragraph 29 are characterizations of the DA and LDDA. Those documents speak for themselves and are the best evidence of their contents; accordingly, Defendant-Intervenors deny these allegations.

1       30.     The allegations in paragraph 30 are characterizations of the DA, the LDDA, and the  
2 Assistant City Administrator's February 3, 2016 report. Those documents speak for themselves and  
3 are the best evidence of their contents; accordingly, Defendant-Intervenors deny these allegations.

4       31.     The allegations in paragraph 31 are characterizations of the DA. The DA speaks for  
5 itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
6 allegations

7       32.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in paragraph 32 and therefore deny them.

9       33.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
10 the truth of the allegations in paragraph 33 and therefore deny them.

11      34.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
12 the truth of the allegations in paragraph 34 and therefore deny them.

13      35.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
14 the truth of the allegations in paragraph 35 and therefore deny them. Insofar as paragraph 35  
15 contains characterizations of the DA, the DA speaks for itself and is the best evidence of its contents;  
16 accordingly, Defendant-Intervenors deny these allegations.

17      36.     The allegations in paragraph 36 are Plaintiff's characterizations of the Oakland City  
18 Council's health and safety hearing process and the Council's review of the evidence from these  
19 hearings. Defendant-Intervenors deny these allegations.

- 20           a.     Defendant-Intervenors admit that Resolution No. 85054 was passed on June  
21                   17, 2014 but deny the remainder of the allegations in paragraph 36(a).
- 22           b.     Defendant-Intervenors admit the existence and content of the press release  
23                   alleged in paragraph 36(b), but lack sufficient knowledge or information to  
24                   form a belief as to the date on which it was published.
- 25           c.     Defendant-Intervenors lack sufficient knowledge or information to form a  
26                   belief as to the truth of the allegations in paragraph 36(c) and therefore deny  
27                   them.
- 28           d.     Defendant-Intervenors admit the allegations in paragraph 36(d).

1       37. Defendant-Intervenors admit that a public health and safety hearing was held in  
2 September 2015. Defendant-Intervenors deny Plaintiff's characterization of the hearing as a "sham"  
3 public process, and deny the remaining allegations in paragraph 37.

4       38. Defendant-Intervenors admit that Bay Area Air Quality Management District  
5 (BAAQMD) regulates non-vehicular sources of emissions into the air in the Bay Area. Defendants  
6 lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations  
7 in paragraph 38 and therefore deny them.

8       39. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
9 the truth of the allegations in paragraph 39 and therefore deny them.

10      40. The allegations in paragraph 40 are characterizations of a City Council resolution  
11 passed on May 3, 2016. That document speaks for itself and is the best evidence of its contents;  
12 accordingly, Defendant-Intervenors deny these allegations.

13      41. Defendant-Intervenors admit City Council retained Environmental Science  
14 Associates ("ESA") but deny Plaintiff's characterizations that ESA was retained "to selectively  
15 review the record" or that ESA was supposed "to create findings that would appear to support a  
16 finding of 'health and/or safety impacts.'"

17      42. Defendant-Intervenors deny the allegations in paragraph 42.

18      43. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
19 the truth of the allegations in paragraph 43 and therefore deny them.

20      44. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
21 the truth of the allegations in paragraph 44 and therefore deny them.

22      45. Defendant-Intervenors admit ESA issued a Report on or around June 23, 2016.

23      46. Defendant-Intervenors admit that the City of Oakland released proposed drafts of the  
24 Ordinance and Resolution on June 24, 2016, and that City staff prepared an Agenda Report.  
25 Defendant-Intervenors deny the remaining allegations in paragraph 46, including Plaintiff's  
26 characterizations of the Agenda Report. The Agenda Report speaks for itself and is the best evidence  
27 of its contents.

1       47. Defendant-Intervenors admit that City Council held a public hearing on June 27,  
2 2016, at which City Council adopted the Resolution and held a first vote on the Ordinance.  
3 Defendant-Intervenors deny that the Ordinance was adopted on June 27, 2016, and deny the  
4 remaining allegations in paragraph 47.

5       48. The allegations in paragraph 48 are characterizations of the ESA Report. That  
6 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
7 Intervenors deny these allegations.

8       49. The allegations in paragraph 49 are characterizations of the ESA Report. That  
9 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
10 Intervenors deny these allegations.

11       50. The allegations in paragraph 50 are characterizations of the ESA Report. That  
12 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
13 Intervenors deny these allegations.

14       51. The allegations in paragraph 51 are too vague to permit a specific response. On that  
15 basis, Defendant-Intervenors deny the allegations in paragraph 51.

16       52. The allegations in paragraph 52 are characterizations of the ESA Report and City  
17 Council's administrative record. Those documents speak for themselves and are the best evidence of  
18 their contents; accordingly, Defendant-Intervenors deny these allegations.

19       53. The allegations in paragraph 53 are characterizations of the ESA Report. That  
20 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
21 Intervenors deny these allegations.

22       54. The allegations in paragraph 54 are characterizations of the ESA Report. That  
23 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
24 Intervenors deny these allegations.

25       55. The allegations in paragraph 55 are characterizations of the ESA Report. That  
26 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
27 Intervenors deny these allegations.

28       56. Defendant-Intervenors deny the allegations in paragraph 56.

1       57. The allegations in paragraph 57 are characterizations of the ESA Report. That  
2 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
3 Intervenors deny these allegations.

4       58. The allegations in paragraph 58 are characterizations of the ESA Report. That  
5 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
6 Intervenors deny these allegations.

7       59. Defendant-Intervenors deny the allegations in paragraph 59.

8       60. The allegations in paragraph 60 are characterizations of the ESA Report. That  
9 document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
10 Intervenors deny these allegations.

11       61. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
12 the truth of the allegations in the first sentence of paragraph 61 and therefore deny them. The  
13 remaining allegations in paragraph 61 are characterizations of the ESA Report. That document  
14 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
15 these allegations.

16       62. Defendant-Intervenors admit the first sentence of paragraph 62. The remaining  
17 allegations in paragraph 62 are characterizations of the ESA Report. That document speaks for itself  
18 and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these allegations.

19       63. Defendant-Intervenors admit that the Long Beach terminal is enclosed in some  
20 manner, but lack sufficient knowledge or information to form a belief as to the truth of the remaining  
21 allegations in paragraph 63, and therefore deny them.

22       64. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
23 the truth of the allegations in the first sentence of paragraph 64 and therefore deny them. Defendant-  
24 Intervenors admit that Air Quality Management Districts regulate air quality pursuant to delegation  
25 from the State of California.

26       65. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
27 the truth of the allegations in paragraph 65 and therefore deny them.

1       66. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
2 the truth of the allegations in paragraph 66 and therefore deny them.

3       67. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
4 the truth of the allegations in paragraph 67 and therefore deny them.

5       68. The allegations in paragraph 68 are characterizations of the ESA Report and City  
6 Council's administrative record. Those documents speak for themselves and are the best evidence of  
7 their contents; accordingly, Defendant-Intervenors deny these allegations.

8       69. Defendant-Intervenors admit the first sentence of paragraph 69, and admit that  
9 BAAQMD has some regulatory authority over air pollution from non-vehicular sources.

10      70. The allegations in paragraph 70 characterize the ESA Report. That document speaks  
11 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
12 allegations.

13      71. The allegations in paragraph 71 are conclusions of law to which no response is  
14 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
15 allegations.

16      72. The allegations in paragraph 72 are characterizations of BAAQMD regulations. The  
17 regulations speak for themselves and are the best evidence of their contents; accordingly, Defendant-  
18 Intervenors deny these allegations.

19      73. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
20 the truth of the allegations in paragraph 73 and therefore deny them. To the extent that the  
21 allegations in paragraph 73 characterize BAAQMD regulations, the regulations speak for themselves  
22 and are the best evidence of their contents; accordingly, Defendant-Intervenors deny these  
23 allegations.

24      74. The allegations in paragraph 74 are characterizations of BAAQMD regulations. The  
25 regulations speak for themselves and are the best evidence of their contents; accordingly, Defendant-  
26 Intervenors deny these allegations.

27      75. Defendant-Intervenors admit that storage domes and enclosed conveyors are  
28 occasionally used in coal and petcoke facilities, but deny the remaining allegations in the first

1 sentence of paragraph 75. The remaining allegations in paragraph 75 characterize the ESA Report.  
2 That document speaks for itself and is the best evidence of its contents; accordingly, Defendant-  
3 Intervenors deny these allegations.

4 76. Defendant-Intervenors deny the allegations in paragraph 76.

5 77. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in paragraph 77 and therefore deny them. To the extent that the  
7 allegations in paragraph 77 characterize the ESA Report and City Council's administrative record,  
8 those documents speak for themselves and are the best evidence of their contents; accordingly,  
9 Defendant-Intervenors deny these allegations.

10 78. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
11 the truth of the allegations in paragraph 78 and therefore deny them. To the extent that the  
12 allegations in paragraph 78 characterize the ESA Report and City Council's administrative record,  
13 those documents speak for themselves and are the best evidence of their contents; accordingly,  
14 Defendant-Intervenors deny these allegations.

15 79. The allegations in paragraph 79 characterize the ESA Report and City Council's  
16 administrative record. Those documents speak for themselves and are the best evidence of their  
17 contents; accordingly, Defendant-Intervenors deny these allegations.

18 80. Defendant-Intervenors admit the first sentence of paragraph 80. The remaining  
19 allegations in paragraph 80 characterize the ESA Report. That document speaks for itself and is the  
20 best evidence of its contents; accordingly, Defendant-Intervenors deny these allegations.

21 81. Paragraph 81 contains conclusions of law that require no response. To the extent a  
22 response may be deemed required, Defendant-Intervenors deny the allegations.

23 82. The allegations in paragraph 82 characterize the ESA Report. That document speaks  
24 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
25 allegations.

26 83. Defendant-Intervenors admit that railcar covers and/or surfactants can possibly  
27 reduce some coal dust emissions. The remaining allegations in paragraph 83 characterize the ESA  
28

1 Report. That document speaks for itself and is the best evidence of its contents; accordingly,  
2 Defendant-Intervenors deny these allegations.

3       84.     Defendant-Intervenors deny the allegations in paragraph 84.

4       85.     The allegations in paragraph 85 characterize the ESA Report. That document speaks  
5 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
6 allegations.

7       86.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in paragraph 86 and therefore deny them.

9           a.     Defendant-Intervenors lack sufficient knowledge or information to form a  
10              belief as to the truth of the allegations in paragraph 86(a) and therefore deny  
11              them.

12           b.     Defendant-Intervenors lack sufficient knowledge or information to form a  
13              belief as to the truth of the allegations in paragraph 86(b) and therefore deny  
14              them.

15           c.     Defendant-Intervenors lack sufficient knowledge or information to form a  
16              belief as to the truth of the allegations in paragraph 86(c) and therefore deny  
17              them.

18           d.     Defendant-Intervenors lack sufficient knowledge or information to form a  
19              belief as to the truth of the allegations in paragraph 86(d) and therefore deny  
20              them.

21           e.     Defendant-Intervenors lack sufficient knowledge or information to form a  
22              belief as to the truth of the allegations in paragraph 86(e) and therefore deny  
23              them.

24       87.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
25 the truth of the allegations in paragraph 87 and therefore deny them.

26       88.     The allegations in paragraph 88 characterize the ESA Report. That document speaks  
27 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
28 allegations.

1       89.     The allegations in paragraph 89 characterize the ESA Report. That document speaks  
2 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
3 allegations.

4       90.     The allegations in paragraph 90 characterize the ESA Report and City Council's  
5 administrative record. Those documents speak for themselves and are the best evidence of their  
6 contents; accordingly, Defendant-Intervenors deny these allegations.

7       91.     The allegations in paragraph 91 characterize the ESA Report. That document speaks  
8 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
9 allegations.

10      92.     The allegations in paragraph 92 characterize the ESA Report. That document speaks  
11 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
12 allegations.

13      93.     The first sentence of paragraph 93 characterizes the ESA report. That document  
14 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
15 these allegations. Defendant-Intervenors deny the second sentence of paragraph 93.

16      94.     The first sentence of paragraph 94 characterizes the ESA report. That document  
17 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
18 these allegations. Defendant-Intervenors deny the second sentence of paragraph 94.

19      95.     The first two sentences of paragraph 95 characterize the ESA Report and City  
20 Council's administrative record. Those documents speak for themselves and are the best evidence of  
21 their contents; accordingly, Defendant-Intervenors deny these allegations. Defendant-Intervenors  
22 deny the last sentence of paragraph 95.

23      96.     The allegations in paragraph 96 characterize the Staff Report. That document speaks  
24 for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these  
25 allegations.

26      97.     Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
27 the truth of the allegations in paragraph 97 and therefore deny them.

1       98. Defendant-Intervenors admit that Zoe Chafe was retained to prepare a report.  
2 Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the  
3 remaining allegations in paragraph 98 and therefore deny them.

4       99. Defendant-Intervenors deny the allegations in paragraph 99.

5       100. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in paragraph 100 and therefore deny them.

7       101. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in paragraph 101 and therefore deny them.

9       102. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
10 the truth of the allegations in paragraph 102 and therefore deny them.

11       103. The allegations in paragraph 103 characterize the Chafe Report. That document  
12 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
13 these allegations.

14       104. The allegations in paragraph 104 characterize the Chafe Report. That document  
15 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
16 these allegations.

17       105. The allegations in paragraph 105 characterize the Chafe Report. That document  
18 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
19 these allegations.

20       106. The allegations in paragraph 106 characterize the Chafe Report. That document  
21 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
22 these allegations.

23       107. The allegations in paragraph 107 characterize the Chafe Report. That document  
24 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
25 these allegations.

26       108. Defendant-Intervenors deny the allegations in paragraph 108.

27       109. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
28 the truth of the allegations in the first sentence of paragraph 109 and therefore deny them. The

1 remaining allegations in paragraph 109 characterize the Chafe Report and City Council's  
2 administrative record. Those documents speak for themselves and are the best evidence of their  
3 contents; accordingly, Defendant-Intervenors deny these allegations.

4       110. The allegations in paragraph 110 characterize the Chafe Report. That document  
5 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
6 these allegations.

7       111. Defendant-Intervenors deny the allegations in paragraph 111.

8       112. The allegations in paragraph 112 characterize the Chafe Report. That document  
9 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
10 these allegations.

11       113. The allegations in paragraph 113 characterize the Chafe Report. That document  
12 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
13 these allegations.

14       114. The allegations in paragraph 114 characterize the Chafe Report and City Council's  
15 administrative record. Those documents speak for themselves and are the best evidence of their  
16 contents; accordingly, Defendant-Intervenors deny these allegations. Defendant-Intervenors deny  
17 that the Secretary of Transportation has designated coal as safe for transportation.

18       115. The allegations in paragraph 115 characterize the Chafe Report. That document  
19 speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny  
20 these allegations.

21       116. The allegations in paragraph 116 characterize the Ordinance and Resolution. Those  
22 documents speak for themselves and are the best evidence of their contents; accordingly, Defendant-  
23 Intervenors deny these allegations.

24       117. The allegations in paragraph 117 characterize the Ordinance and Resolution. Those  
25 documents speak for themselves and are the best evidence of their contents; accordingly, Defendant-  
26 Intervenors deny these allegations.

27       118. Defendant-Intervenors deny the allegations in the first sentence of paragraph 118. The  
28 remaining allegations in paragraph 118 characterize the ESA Report and City Council's

1 administrative record. Those documents speak for themselves and are the best evidence of their  
 2 contents; accordingly, Defendant-Intervenors deny these allegations.

3       119. Defendant-Intervenors deny the allegations in the first sentence of paragraph 119. The  
 4 second sentence of paragraph 119 characterizes the ESA report. That document speaks for itself and  
 5 is the best evidence of its contents; accordingly, Defendant-Intervenors deny these allegations.

6       120. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
 7 the truth of the allegations in paragraph 120 and therefore deny them.

8           a.      Defendant-Intervenors lack sufficient knowledge or information to form a  
 9                  belief as to the truth of the allegations in paragraph 120(a) and therefore deny  
 10                 them.

11           b.      Defendant-Intervenors lack sufficient knowledge or information to form a  
 12                  belief as to the truth of the allegations in paragraph 120(b) and therefore deny  
 13                 them.

14           c.      Defendant-Intervenors lack sufficient knowledge or information to form a  
 15                  belief as to the truth of the allegations in paragraph 120(c) and therefore deny  
 16                 them.

17       121. The allegations in paragraph 121 characterize the Ordinance and Resolution. Those  
 18 documents speak for themselves and are the best evidence of their contents; accordingly, Defendant-  
 19 Intervenors deny these allegations.

20       122. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
 21 the truth of the allegations in paragraph 122 and therefore deny them.

22       123. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to  
 23 the truth of the allegations in paragraph 123 and therefore deny them.

24       124. Defendant-Intervenors deny the allegations in paragraph 124.

#### 25                   **FIRST CLAIM FOR RELIEF**

26       125. Paragraph 125 realleges and reincorporates by reference the allegations set forth in  
 27 paragraphs 1 through 124 of the Complaint. Defendant-Intervenors hereby reincorporate each and  
 28 every answer contained in paragraphs 1 through 124 as though fully set forth herein.

126. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 126 and therefore deny them.

127. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 127 and therefore deny them.

128. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 128 and therefore deny them.

129. The allegations in paragraph 129 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

130. Defendant-Intervenors deny the allegations in paragraph 130.

131. Defendant-Intervenors deny the allegations in paragraph 131.

132. Defendant-Intervenors deny the allegations in paragraph 132.

133. Defendant-Intervenors deny the allegations in paragraph 133.

134. The allegations in paragraph 134 are characterizations of Plaintiff's case which require no response. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

## **SECOND CLAIM FOR RELIEF**

135. Paragraph 135 realleges and reincorporates by reference the allegations set forth in paragraphs 1 through 124 of the Complaint. Defendant-Intervenors hereby reincorporate each and every answer contained in paragraphs 1 through 124 as though fully set forth herein.

136. Defendant-Intervenors deny the allegations in paragraph 136.

137. Defendant-Intervenors deny the allegations in paragraph 137.

138. Defendant-Intervenors deny the allegations in paragraph 138.

139. The allegations in paragraph 139 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

1       140. The allegations in paragraph 140 are conclusions of law to which no response is  
2 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
3 allegations.

4       141. Defendant-Intervenors deny the allegations in paragraph 141.

5       142. Defendant-Intervenors deny the allegations in paragraph 142.

6       143. Defendant-Intervenors deny the allegations in paragraph 143.

7       144. The allegations in paragraph 144 are conclusions of law to which no response is  
8 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
9 allegations.

10       145. The allegations in paragraph 145 are conclusions of law to which no response is  
11 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
12 allegations.

13       146. The allegations in paragraph 146 are conclusions of law to which no response is  
14 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
15 allegations.

16       147. The allegations in paragraph 147 are conclusions of law to which no response is  
17 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
18 allegations.

19       148. The allegations in paragraph 148 are conclusions of law to which no response is  
20 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
21 allegations.

22       149. The allegations in paragraph 149 are conclusions of law to which no response is  
23 required. To the extent a response may be deemed required, Defendant-Intervenors deny the  
24 allegations.

25       150. Defendant-Intervenors deny the allegations in paragraph 150.

26       151. Defendant-Intervenors deny the allegations in paragraph 151.

27       152. Defendant-Intervenors deny the allegations in paragraph 152.

153. The allegations in paragraph 153 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

154. Defendant-Intervenors deny the allegations in paragraph 154.

155. The allegations in paragraph 155 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

156. Defendant-Intervenors deny the allegations in paragraph 156.

157. Defendant-Intervenors deny the allegation in paragraph 157 that the Ordinance discriminates against shippers that deal in coal and petcoke; the remaining allegations in paragraph 157 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

158. Defendant-Intervenors deny the allegations paragraph 158.

159. Defendant-Intervenors deny the allegations paragraph 159.

160. The allegations in paragraph 160 are characterizations of Plaintiff's case which require no response. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations.

## **THIRD CLAIM FOR RELIEF**

161. Paragraph 161 realleges and reincorporates by reference the allegations set forth in paragraphs 1 through 124 of the Complaint. Defendant-Intervenors hereby reincorporate each and every answer contained in paragraphs 1 through 124 as though fully set forth herein.

162. The allegations in paragraph 162 are conclusions of law to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny the allegations. In addition, paragraph 162 purports to characterize the DA. The DA speaks for itself and is the best evidence of its contents; accordingly, Defendant-Intervenors deny these allegations.

163. Defendant-Intervenors deny the allegations in paragraph 163.

164. Defendant-Intervenors deny the allegations in paragraph 164.

165. Defendant-Intervenors deny the allegations in paragraph 165.

166. Defendant-Intervenors deny the allegations in paragraph 166.

167. Defendant-Intervenors deny the allegations in paragraph 167.

## **PRAAYER FOR RELIEF**

168. The remainder of Plaintiff's Complaint consists of the prayer for relief, to which no response is required. To the extent a response may be deemed required, Defendant-Intervenors deny that Plaintiff is entitled to the relief requested in Paragraphs A through D, or to any relief whatsoever.

## **GENERAL DENIAL**

169. Defendant-Intervenors deny each and every allegation of Plaintiff's Complaint not expressly admitted or qualified herein.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

## **(Failure to state a claim)**

170. Plaintiff has failed to state a claim upon which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

## **SECOND AFFIRMATIVE DEFENSE**

### **(Lack of standing)**

171. Plaintiff lacks Article III standing to bring this lawsuit. Plaintiff also lacks standing to pursue some or all of its claims under the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101–16101; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101–5127; and the Shipping Act of 1984, 46 U.S.C. §§ 40101–41309.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Statute of limitations)**

172. Plaintiff has failed to meet the applicable statute of limitations to pursue some or all of its claims under California Government Code section 65009(c)(1).

1 WHEREFORE, Defendant-Intervenors respectfully request that the Court deny Plaintiff's  
2 prayer for relief, that Plaintiff takes nothing, and that the case be dismissed with prejudice.  
3

4 DATED: February 16, 2017

Respectfully submitted,

5 /s/ Colin O'Brien

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